

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jonathan Phillips	Team: Team # 6	CCRB Case #: 201100838	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 01/15/2011 12:45 AM	Location of Incident: § 87(2)(b)	Precinct: 75	18 Mo. SOL 7/15/2012	EO SOL 7/15/2012	
Date/Time CV Reported Sat, 01/15/2011 3:47 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 01/20/2011 3:47 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. CPT Scott Henderson	00000	915880	PBBN
3. POM Paul Viar	20378	923317	075 PCT
4. SGT Kenneth Zepherin	04649	905332	INT CIS
5. POM Daniel Barreto	29988	939904	075 PCT
6. POM Robert Mayer	18638	940441	075 PCT
7. SGT Florencio Arquer	01846	915250	075 PCT
8. POM Stephen Berardi	29456	939914	075 PCT
9. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Scott Mustapich	09957	949381	PBBN
2. POM Thomas Fusco	09284	940918	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Abuse: Officers drew their guns.	§ 87(2)(b)
B. An officer	Discourtesy: An officer spoke obscenely and rudely to § 87(2)(b)	§ 87(2)(b)
C. An officer	Abuse: An officer frisked § 87(2)(b)	§ 87(2)(b)
D.SGT Kenneth Zepherin	Abuse: Sgt. Kenneth Zepherin supervised the entry of § 87(2)(b)	§ 87(2)(b)
E.SGT Kenneth Zepherin	Abuse: Sgt. Kenneth Zepherin supervised the search of § 87(2)(b)	§ 87(2)(b)
F. Officers	Abuse: Officers damaged § 87(2)(b)'s property.	§ 87(2)(b)
G. Officers	Force: Officers used physical force against § 87(2)(b)	§ 87(2)(b)
H.CPT Scott Henderson	Discourtesy: Capt. Scott Henderson spoke obscenely and rudely to § 87(2)(b)	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
§ 87(4-b) § 87(2)(g)	[REDACTED]	[REDACTED]
§ 87(4-b) § 87(2)(g)	[REDACTED]	[REDACTED]
§ 87(4-b) § 87(2)(g)	[REDACTED]	[REDACTED]
§ 87(4-b) § 87(2)(g)	[REDACTED]	[REDACTED]
§ 87(4-b) § 87(2)(g)	[REDACTED]	[REDACTED]

Case Summary

§ 87(2)(b) called the Internal Affairs Bureau (IAB) on January 15, 2011, and reported the following incident over the telephone. IAB assigned the complaint log #11-02229 (*encl. 10*) and forwarded it to the Civilian Complaint Review Board (CCRB) on January 20, 2011.

At approximately 12:45 a.m. on January 15, 2011, Sgt. Kenneth Zepherin and members of the 75th Precinct Anti-Crime team arrived at § 87(2)(b) apartment, located at § 87(2)(b) in Brooklyn, in response to information received about a party being held at the location involving two rival gangs, § 87(2)(b). The following allegations resulted from this incident.

- **Allegation A: Abuse of Authority: Officers drew their guns.**

§ 87(2)(g)
[Redacted]
[Redacted]
[Redacted]

- **Allegation B: Discourtesy: An officer spoke obscenely and rudely to § 87(2)(b)**

- **Allegation C: Abuse of Authority: An officer frisked § 87(2)(b)**

§ 87(2)(g)
[Redacted]

- **Allegation D: Abuse of Authority: Sgt. Kenneth Zepherin supervised the entry of § 87(2)(b) in Brooklyn.**

§ 87(2)(g)
[Redacted]

- **Allegation E: Abuse of Authority: Sgt. Kenneth Zepherin supervised the search of § 87(2)(b) in Brooklyn.**

- **Allegation F: Abuse of Authority: Officers damaged § 87(2)(b) property.**

§ 87(2)(g)
[Redacted]
[Redacted]

- **Allegation G: Force: Officers used physical force against § 87(2)(b)**

- **Allegation H: Discourtesy: Capt. Scott Henderson spoke obscenely and rudely to § 87(2)(b)**

§ 87(2)(g)
[Redacted]
[Redacted]

- **§ 87(4-b) § 87(2)(g)**

[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

§ 87(4-b) § 87(2)(g)

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Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- *At the time of the incident § 87(2)(b) was a § 87(2)(b)-year-old African-American male with black hair and brown eyes who stood 6'1", 180 lbs.*

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB on March 14, 2011 (*encl. 13*). § 87(2)(g)

At approximately 5:00 p.m. on January 14, 2011, § 87(2)(b) was celebrating the high school graduation of his § 87(2)(b)-year-old cousin, § 87(2)(b) at his apartment located at § 87(2)(b) in Brooklyn. Along with § 87(2)(b) and § 87(2)(b) § 87(2)(b)-year-old brother, § 87(2)(b) was hosting his § 87(2)(b)-year-old cousin, § 87(2)(b) his § 87(2)(b)-year-old cousin, § 87(2)(b) and his § 87(2)(b)-year-old friend, § 87(2)(b) whose last name § 87(2)(b) did not know and who was identified by the investigation as § 87(2)(b). No other civilians were inside § 87(2)(b) apartment. The group of men were gathered inside the living room of the apartment eating pizza and playing video games. Music played at a low volume from § 87(2)(b) laptop computer; he was not using any specialized equipment, including subwoofers, to amplify the music. § 87(2)(b) denied that alcohol or drugs were being consumed inside his apartment and he denied that he was hosting a party at his home on the date in question.

At approximately 11:00 p.m. § 87(2)(b) heard five loud bangs on his apartment's door. Through the peephole § 87(2)(b) saw PO1 (who remains unidentified and who was described as a plain clothed Hispanic male wearing a black bubble coat who appeared to be in his mid-thirties and who had big ears and stood about 5'7"-5'8", 180-200 lbs.) and PO2 (who remains unidentified and was described as a plain clothed white male wearing a hoody and who was bald-headed and appeared to be in his late-twenties and who stood about 6', 200-220 lbs.) standing on the opposite side of his door in the hallway. Through the door § 87(2)(b) asked, "Who is it?" and PO1 and PO2 shouted, "Police! Open up! Open up!" § 87(2)(b) opened the door and panicked because PO1 and PO2 had their guns in hand with about six other plain-clothed officers (whom § 87(2)(b) could not describe) standing behind them in the hallway; § 87(2)(b) thought that they he was being robbed because the men were in plainclothes.

PO2 grabbed § 87(2)(b) by his brown leather coat with one hand and pulled him into the hallway and yelled, “Get the fuck over here! Get the fuck on the wall!” PO1 and the group of six other officers entered § 87(2)(b) apartment with their guns in hand and PO2 remained in the hallway with § 87(2)(b). PO2 ordered § 87(2)(b) to turn around and to face a wall about fifteen feet from the entrance to his apartment and § 87(2)(b) spread his hands across the wall. PO2 frisked § 87(2)(b) chest, torso, arms and waist area. PO2 stood with § 87(2)(b) in the hallway for about twenty minutes. § 87(2)(b) repeatedly asked PO2 questions about what was happening and PO2 told him to relax and to remain quiet. § 87(2)(b) was never handcuffed.

After twenty minutes PO2 ushered § 87(2)(b) back into his apartment and § 87(2)(b) saw his friends and family members seated on the living room floor with their hands on their knees. The main entrance to § 87(2)(b) apartment leads into the living room and the kitchen. The officers inside the apartment asked repeated questions about who the owner of the apartment was and whose name was on the lease and § 87(2)(b) told them that his name was on the lease. § 87(2)(b) was ordered to remain in the living room with the rest of his friends and family members and he remained there for the next four hours.

During that time, § 87(2)(b) saw several of the plainclothes officers (whom § 87(2)(b) could not describe) and PO3 (who remains unidentified and who was described as a plain clothed white male with gray hair who appeared to be in his mid-forties and who stood 5’9”, 240 lbs.) walk back and forth through a long hallway that connects the apartment’s living room to the three bedrooms located in the rear of the apartment. Because § 87(2)(b) remained in the living room he did not know what the officers did in the rear of the apartment and they never told him what they were doing or what they were looking for. At one point during the four hours that the officers were inside the apartment, § 87(2)(b) saw PO3 climb on top of the stove and counter tops in the kitchen and open several of the kitchen cabinets. PO3 opened a deep freezer unit that is positioned to the right of the apartments’ main entrance in the kitchen and rummaged through it, disconnecting the insulation from the top panel.

Eventually Capt. Scott Henderson (identified via investigation) entered the apartment with several other uniformed officers. While performing a search with a laptop computer, the officers discovered that § 87(2)(b) brother, § 87(2)(b) had an open warrant from a 2009 summons. § 87(2)(b) was handcuffed and was removed from the apartment.

§ 87(2)(b) received a telephone call from his mother and spoke to her about what was happening inside the apartment. While a group of uniformed officers (whom § 87(2)(b) could not describe) spoke to § 87(2)(b) and his family members, another officer (whom § 87(2)(b) could not describe) yelled to § 87(2)(b) “Get off the phone! Get the fuck off the phone!” Capt. Henderson approached § 87(2)(b) grabbed him by the collar, slammed him into a wall, and choked him. Capt. Henderson and six other uniformed officers took § 87(2)(b) to the ground and punched and kicked him all over his body numerous times. § 87(2)(b) initiated no physical contact with the officers who were inside the apartment. § 87(2)(b) was handcuffed and was removed from the apartment.

Throughout the time that the officers were inside the apartment they kept § 87(2)(b) and his family in the living room and did not allow them to walk around the apartment. The officers never presented any documentation stating that they could search the apartment. None of the individuals inside the apartment were ever ordered to leave the apartment or disperse. Once the officers left the apartment, § 87(2)(b) walked to the rear of the apartment and entered his

bedroom. There, he saw that his clothing had been removed from its dressers and was scattered on the floor. § 87(2)(b) bed post was disconnected from its frame and his night stand and lamp were broken.

§ 87(2)(b)

§ 87(2)(g)

Victim: § 87(2)(b)

- *At the time of the incident § 87(2)(b) was a § 87(2)(b)-year-old African-American male who stood 6'1", 205 lbs.*

Telephone Statements

§ 87(2)(b) provided telephone statements on February 16 and March 6, 2011 (*encl. 15A-B*).

§ 87(2)(g)

On January 14, 2011, § 87(2)(b) lent his stereo equipment to his step-brother, § 87(2)(b), who was attending a party in an isolated four-building section of the Linden Housing Development. It was § 87(2)(b) understanding that his step-brother was attending a going-away party for an individual who lived in the building, whom § 87(2)(b) denied knowing by name. § 87(2)(b) allowed his step-brother to borrow his set of speakers and a four-hundred watt receiver. § 87(2)(b) never attended the party and he remained at his home located on Stanley Avenue throughout the evening and he consumed about four shots of vodka by himself.

At some point during the evening, § 87(2)(b) received a phone call from § 87(2)(b) who alerted him that he was at a nearby store and had received a phone call from a person attending the party that the cops had arrived to break the party up and were raiding the apartment where the party was taking place. § 87(2)(b) told him that he had left the party before the police arrived. The two men agreed to meet up in order to travel to the apartment so that § 87(2)(b) could retrieve his stereo equipment. § 87(2)(b) stated that he was intoxicated at the time that he departed for § 87(2)(b).

§ 87(2)(b) and his step-brother arrived outside of § 87(2)(b) and § 87(2)(b) did not see any police vehicles parked outside. § 87(2)(b) entered the building alone while § 87(2)(b) remained outside. § 87(2)(b) walked to a corner apartment where his step-brother had directed him but saw no police officers or civilians inside the hallway and he heard no music being played.

The door to the corner apartment was cracked open and a uniformed police officer standing inside the apartment invited § 87(2)(b) inside by saying, "Come in." § 87(2)(b) entered the living room of the apartment and saw about nine uniformed police officers and about twenty-five male and female teenagers, whom § 87(2)(b) did not know, standing against a wall in the living room. He saw no plainclothed officers inside the apartment at the time that he arrived. The living room area was dark and contained no furniture. Based on the apartment's appearance, § 87(2)(b) thought that the apartment was abandoned or that the tenants living there were in the process of moving. § 87(2)(b) saw no evidence of alcohol being consumed and he did not smell any marijuana inside the apartment, though he speculated that both were probably being consumed.

Because the living room was empty, and because § 87(2)(b) had lent his stereo for the party, he speculated that the teenagers attending the party had been dancing in the living room before the officers arrived.

When § 87(2)(b) entered the apartment there was one African-American male who stood about 6'5" standing against the wall in handcuffs and who was identified by the investigation as § 87(2)(b); § 87(2)(b) recognized this individual as the owner of the apartment but he did not know him by name. That individual's brother, whom § 87(2)(b) also recognized but denied knowing by name but who was identified by the investigation as § 87(2)(b) was standing against the wall with the rest of the teenagers but was not saying anything. Apart from standing against the wall § 87(2)(b) did not see § 87(2)(b) doing anything else. The uniformed officers inside the apartment were speaking to the group of teenagers but § 87(2)(b) could not recall what was being said.

From where he was positioned in the living room § 87(2)(b) could see his stereo in the shopping cart that he uses to haul it sitting near the entrance to the kitchen, which is separated from the living room by a wall. § 87(2)(b) could not see any other rooms from where he was positioned in the living room but at one point saw an officer walking back towards the living room from the rear of the apartment. Because he could not see the bedrooms from where he was positioned, § 87(2)(b) did not know what that officer was doing in the rear.

While inside the apartment, § 87(2)(b) grew upset that he had unknowingly lent his step-brother his stereo to use at a party being hosted in what he thought was an abandoned apartment. § 87(2)(b) placed a telephone call to his step-brother to speak to him about this. Eventually, Capt. Scott Henderson entered the apartment with additional uniformed officers. § 87(2)(b) remained on the telephone and Capt. Henderson shouted, "Get off the fucking phone!"

§ 87(2)(b) told Capt. Henderson that he just wanted to get his stereo and leave the apartment. PO1 (who remains unidentified and who was described by § 87(2)(b) as a uniformed Hispanic male in his late twenties who stood 6'2" and weighed over 200 lbs.) grabbed § 87(2)(b) right arm and § 87(2)(b) pulled his arm back and protested that he had not done anything. From there, PO2 and a group of at least two additional uniformed officers pulled § 87(2)(b) to the ground and § 87(2)(b) landed on his side and he covered his head and face with his hands. The officers kicked him in his ribs, back, and legs about ten times and § 87(2)(b) sustained bruises to his legs; he received no medical treatment for these bruises. Eventually § 87(2)(b) told the officers that he would surrender and the officers stopped kicking him and handcuffed him. § 87(2)(b) denied punching, pushing, or using any force against any of the officers involved in his arrest.

Witness: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-year-old African-American male at the time of the incident.

Telephone Statement

§ 87(2)(b) provided a telephone statement on March 29, 2011 (*encl. 14*). § 87(2)(g)

At the time of the incident, § 87(2)(b) was in a bedroom in the rear of the apartment and he therefore did not see how or why the officers entered the apartment. § 87(2)(b) exited the bedroom and he saw numerous plainclothed and uniformed police officers walking around the

apartment. Because he did not see the initial entry into his apartment, § 87(2)(b) did not know which officers entered the apartment first. The officers discovered that § 87(2)(b) had an open warrant stemming from a summons he received in 2009 and they arrested him, along with another individual whom § 87(2)(b) did not know by name. § 87(2)(b) denied seeing the arrest of the other individual who was arrested from the apartment and he gathered none of the names of the officers who were present.

Attempts to Contact Civilians

Despite exhaustive measures taken by the CCRB, verified statements from § 87(2)(b) and § 87(2)(b) could not be obtained. § 87(2)(b) did not know and was unable to supply the undersigned investigator with telephone numbers for his two cousins, § 87(2)(b) and § 87(2)(b) and friend, § 87(2)(b). He provided addresses for § 87(2)(b) and § 87(2)(b) and he stated that § 87(2)(b) lived in Queens with his mother, § 87(2)(b) but he did not know the exact address of their home. A Lexis-Nexis search produced two addresses linked to § 87(2)(b) § 87(2)(b) in Queens, NY, but did not produce any telephone numbers linked to those addresses. Similarly, Lexis-Nexis searches did not produce telephone numbers for the addresses linked to § 87(2)(b) and § 87(2)(b). During the course of the investigation, multiple contact letters – which have not been returned to the CCRB via the United States Postal Service – were mailed to both addresses linked to § 87(2)(b) in the Lexis-Nexis search, as well as the addresses for § 87(2)(b) and § 87(2)(b). As of the date of this report, none of the aforementioned individuals have contacted the CCRB. Department of Corrections records did not show that any of these individuals were incarcerated.

NYPD Statements:

Subject Officer: SERGEANT KENNETH ZEPHERIN

- *At the time of the incident, Sgt. Zepherin was a § 87(2)(b)-year-old light-skinned Black male with black hair and brown eyes who stood 5'7", 154 lbs.*
- *On January 14, 2011, Sgt. Zepherin was assigned as the field intelligence officer with PO Paul Viar between 5:30 p.m. and 2:05 a.m. Sgt. Zepherin was dressed in plainclothes and he was not assigned to a motor vehicle.*

Memo Book

At 12:25 a.m. on January 15, 2011, Sgt. Zepherin arrived at apartment #§ 87(2)(b) located at § 87(2)(b) in response to information he received concerning § 87(2)(b). Sgt. Zepherin arrived back at the 75th Precinct stationhouse at 12:55 a.m. (encl. 23).

CCRB Testimony

Sgt. Zepherin was interviewed at the CCRB on January 25, 2012 (encl. 24). On January 14, 2011, Sgt. Zepherin was assigned as the field intelligence officer and was responsible for interviewing every prisoner that entered the 75th Precinct stationhouse in order to gather information concerning gang activity within the 75th Precinct and patterns of robberies or burglaries. § 87(2)(e), § 87(2)(f)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Because of the urgency of the situation and the potential for violence, no tactical meeting was held. Sgt. Zepherin called the Anti-Crime team to the stationhouse and organized a team to respond to the building; Sgt. Zepherin did not recall exactly which officers were called to the stationhouse, and he did not know if any other units responded to the building to offer assistance. He did not recall if PO Daniel Barreto, PO Thomas Fusco, PO Stephen Berardi, or PO Robert Mayer (the Anti-Crime officers listed on the roll call) responded with him to the location.

Once the response team was assembled, the team departed for § 87(2)(b). The goal in responding to the location was to speak to the owner of the apartment where the party was being held and prevent a shooting from happening by establishing police presence; the officers' intention was not to search the apartment for weapons.

Upon arriving outside § 87(2)(b) Sgt. Zepherin heard loud music emanating from inside the building. Sgt. Zepherin and his team entered the building and travelled to the § 87(2)(b) floor, the source of the noise, and saw a group of people gathered in the hallway in front of the elevator. Sgt. Zepherin and his team approached the apartment where the music was emanating from with their guns in their holsters and knocked several times on the door. No officer in Sgt. Zepherin's team ever removed or drew their guns. Sgt. Zepherin could not recall who specifically knocked on the door or how many knocks were made, but stated that the high volume of the music required numerous loud bangs to be noticed; Sgt. Zepherin stated that he could not hear his radio because the music was so loud.

Eventually, somebody inside the apartment (whom Sgt. Zepherin could not describe) opened the door and a group of adolescent males and females walked out of the apartment and towards the elevator. As the people inside the apartment continued filtering out of it, one of the officers standing in front of Sgt. Zepherin (whom Sgt. Zepherin could not identify) repeated numerous commands for the music to be lowered. The music continued being played at a high volume and the officers began asking questions to the people filtering out of the apartment to establish their activity and identify the owner of the apartment. None of the individuals exiting the apartment identified the owner and Sgt. Zepherin heard voices in the background emanating from inside the apartment shouting, "Yeah, yeah. Fuck the police! Fuck them!" Eventually the music was lowered and an individual inside the apartment (whom Sgt. Zepherin could not identify) consented to the officers' entry by saying, "Come in."

Sgt. Zepherin denied that anybody inside the apartment was physically removed into the hallway and he denied that he or any officer in his team told § 87(2)(b) (whom Sgt. Zepherin did not recognize in the photograph presented during his CCRB interview), "Shut the fuck up! Get the fuck over here!" He denied that he or any of the officers that he was supervising frisked § 87(2)(b) or any civilian, in the hallway. Sgt. Zepherin did not speak to any of the civilians that were exiting the apartment.

Because the apartment was completely dark and none of the individuals spoken to identified the owner of the apartment, the officers whom Sgt. Zepherin was with entered the apartment with their flashlights in hand – after receiving consent to do so from the person at the door – and Sgt. Zepherin remained in the hallway at the entrance to the apartment and he never entered. Sgt. Zepherin stood near the door to prevent people from walking out and he saw at least twenty people gathered in the living room of the apartment; Sgt. Zepherin saw no furniture inside the

living room and the apartment appeared to be abandoned. Sgt. Zepherin did not know how many officers entered the apartment, but stated that once the officers discovered that more people were inside the apartment, and realized that they were vastly outnumbered, additional units were called to the scene.

Sgt. Zepherin's primary role while on scene was to prevent people from leaving the apartment without being identified. Because the apartment appeared to be derelict and because there were so many people inside and the officers had yet to identify the owner of the apartment, the officers needed to identify each person inside the apartment and determine whether any of them legally resided there and rule-out the possibility that the abandoned apartment was serving as a gang headquarters. If none of the individuals inside the apartment identified himself as the owner then each person there would have been arrested and charged with criminal trespassing. Sgt. Zepherin remained at the doorway to prevent anyone from exiting the apartment and spoke to several people attempting to leave and established that none of them lived there. The officers inside the apartment asked each person similar questions to establish their identity and to determine who the owner of the apartment was.

When back-up arrived, Sgt. Zepherin remained at the door and the responding officers (whom Sgt. Zepherin could neither quantify nor identify) entered the apartment and assisted the officers already inside in questioning the people there about their name, address, and purpose for being at the apartment. Because Sgt. Zepherin never entered the apartment he did not know how many rooms it had. Though he saw civilians walking back and forth down a hallway that led to the rear of the apartment, Sgt. Zepherin saw no officers enter any other rooms in the apartment apart from the living room. He denied seeing any officers open any drawers, closets, freezer units, cabinets, or enclosed spaces and denied that the officers performed a search to locate any weapons. None of the officers damaged property inside the apartment. Because both police officers and civilians inside the apartment walked and stood in front of Sgt. Zepherin at the door, Sgt. Zepherin did not keep a constant watch of the apartment's interior.

Eventually, the officers inside the apartment identified the owner and the owner stated that everyone there was permitted to be there. The identification of the owner occurred after the officers entered the apartment and as a product of their questioning of the people inside. Once the owner of the apartment was identified, the officers warned him that the music he had been playing was too loud and that the high volume of people he was hosting inside his apartment created unsafe conditions.

Sgt. Zepherin was questioned whether Capt. Henderson ever arrived at the scene and stated that Capt. Henderson arrived after the call for back-up was placed. Sgt. Zepherin did not know what was happening inside the apartment when Capt. Henderson arrived and he did not know what actions Capt. Henderson took while on scene. Sgt. Zepherin did not know if Capt. Henderson entered the apartment or remained outside in the hallway. Sgt. Zepherin had no recollection of speaking to Capt. Henderson – either in person or over the telephone – about the response to the apartment before Sgt. Zepherin and his team arrived at the building.

Sgt. Zepherin was questioned about the arrest of § 87(2)(b) but he denied witnessing it and he could therefore not details about the force that was used against § 87(2)(b). He did not recognize § 87(2)(b) in the photograph presented to him during his CCRB interview and he denied that any officer used the word “fuck” in ordering § 87(2)(b) to disconnect his phone call.

Witness Officer: PO PAUL VIAR

- *At the time of the incident PO Viar was a § 87(2)(b)-year-old white male with black hair and brown eyes who stood 5'9", 175 lbs.*
- *On January 14, 2011, PO Viar was assigned as the assistant field intelligence officer with Sgt. Zepherin. He was dressed in uniform and worked between 5:30 p.m. and 2:05 a.m.*

Memo Book

PO Viar did not record entries in his memo book relevant to this incident (*encl. 21*).

CCRB Testimony

PO Viar was interviewed at the CCRB on December 22, 2011 (*encl. 22*). § 87(2)(g)

§ 87(2)(g)

§ 87(2)(e), § 87(2)(f)

A supervisor inside the stationhouse assembled a team of officers to respond to the building, but PO Viar did not know which supervisor organized this team; he did not know if Sgt. Zepherin was the supervisor organizing the police response to the location or if Sgt. Zepherin conferred with a supervisor before organizing the response team. A tactical meeting was not held and PO Viar could not recall whether there was a discussion held about procuring a search warrant or determining what actions would be taken to locate the guns that were reported to being stored inside the apartment. PO Viar could not identify any of the officers gathered for the response to the building by name.

PO Viar travelled to the building with Sgt. Zepherin and multiple units converged around the building simultaneously as PO Viar and Sgt. Zepherin arrived; again, PO Viar could not identify any of the responding officers by name. As PO Viar approached the building he heard loud music emanating from within. PO Viar was one of the last officers to arrive on scene and he remained outside of the building watching the windows; PO Viar did not recall if Sgt. Zepherin remained with him outside of the building or whether he entered the building. The other units that had responded – whom PO Viar could not identify by name – entered the building and travelled to the floor where the report of the party was made. The music continued being played for about five or ten minutes and was eventually turned down so that PO Viar could no longer hear it from where he was outside of the building.

PO Viar remained outside of the building for about ten minutes before he was instructed via either radio or cell phone to report to the § 87(2)(b) floor, where the party was held. PO Viar could not recall who directed him inside. When PO Viar arrived on the § 87(2)(b) floor he saw several officers removing an unknown quantity of individuals into the hallway in handcuffs; PO Viar did not know why these individuals were handcuffed and did not see their apprehension. PO Viar was presented with the arrest report completed for § 87(2)(b) by PO Scott Mustapich (whom PO Viar denied knowing) but stated that he did not see any of the activity recorded on the report by PO Mustapich. PO Viar viewed the arrest photograph of § 87(2)(b) and the photograph of § 87(2)(b) but stated that he did not recognize either individual.

When asked about his activity on the § 87(2)(b) floor, PO Viar stated that he remained in the hallway securing the apartment and that he never entered the apartment. PO Viar came within three feet of the entrance to the apartment and saw no furniture inside of it because the apartment was dark and because there was a crowd of about ten uniformed officers standing in front of him obstructing his view of the inside. None of the officers that PO Viar saw had their guns in hand; all guns were holstered. PO Viar saw a group of about twenty-five adolescent black males gathered inside of the apartment and heard the officers inside the apartment asking questions to identify the owner of the apartment. PO Viar heard nothing else being said. He denied that any officer told a civilian to “Shut the fuck up” or “Get the fuck over here” or “Get the fuck off the phone.” PO Viar used no profanity and heard no officer using profanity. PO Viar did not recall if the owner of the apartment was ever identified or whether any of the males gathered inside the apartment were identified as active members of § 87(2)(b). He denied seeing any officer inside the apartment search the apartment, and he did not know what actions were taken by the officers inside the apartment to locate the weapons reported to having been stored there. PO Viar did not see any officers frisk any of the civilians inside of the apartment. No guns were recovered from the apartment.

At some point, Capt. Henderson arrived on the § 87(2)(b) floor but PO Viar denied knowing exactly when Capt. Henderson arrived or what was happening at the moment he arrived. He did not know why Capt. Henderson responded to the location. Capt. Henderson remained in the hallway with PO Viar and he never entered the apartment. After about ten minutes PO Viar walked downstairs and resumed patrol. He did not know what was happening when he left the § 87(2)(b) floor.

Witness Officer: PO ROBERT MAYER

- *At the time of the incident, PO Mayer was a § 87(2)(b)-year-old white male with brown hair and blue eyes who stood 5’9”, 190 lbs.*
- *On January 14, 2011, PO Mayer was assigned to Anti-Crime with PO Stephen Berardi between 5:30 p.m. and 6:05 a.m. PO Mayer was dressed in plainclothes and was assigned to RMP #8134.*

Memo Book

PO Mayer did not record entries in his memo book relevant to this incident (*encl. 31*).

CCRB Testimony

PO Mayer was interviewed at the CCRB on March 16, 2012 (*encl. 32*). § 87(2)(g)

At approximately 12:30 a.m. on January 15, 2011, PO Mayer arrived outside § 87(2)(b) with Sgt. Florencio Arquer, the Anti-Crime supervisor § 87(2)(e), § 87(2)(f)

Several other units converged on the building simultaneously as PO Mayer and Sgt. Arquer arrived outside, but PO Mayer could not identify any of those officers by name apart from the field intelligence officers, Sgt. Zepherin and PO Viar. PO Mayer was asked about the presence of the additional anti-crime officers listed on the 75th Precinct roll call – PO Berardi, PO Fusco, and PO Barreto – but he had no recollection of any of them responding to the building. PO Viar and Sgt. Zepherin remained outside the building and never entered it. PO Mayer and Sgt. Arquer

entered the building, travelled to the § 87(2)(b) floor, and approached an apartment from which loud music was emanating. PO Mayer was unsure whether there were officers already on the seventh floor when he and Sgt. Arquer arrived, or whether he and Sgt. Arquer were the first two officers to respond.

Several knocks were made on the apartment's door and somebody inside (whom PO Mayer could not describe) opened the door, but PO Mayer did not recall whether a conversation occurred at the door between the person who opened the door and the officers standing outside. PO Mayer did not recognize § 87(2)(b) in the photograph presented to him during his CCRB interview, and he denied that he or any other officer physically removed § 87(2)(b) into the hallway or said, "Get the fuck over here! Get on the wall!" No civilian, including § 87(2)(b) was frisked in the hallway and none of the officers on scene ever drew their gun.

The officers entered the apartment but PO Mayer did not know who made the decision to do so, what the purpose of entering the apartment was, or who led the entry. PO Mayer did not hear the person standing at the door consent or refute to the officers' entry of the apartment. PO Mayer passed through the door and entered the living room where he saw Capt. Henderson and about seven other officers (whom PO Mayer could not identify by name) standing inside and a group of about twenty civilians seated on the floor. Because there was no furniture inside the apartment PO Mayer thought that it was abandoned. There were several bottles of alcohol inside the apartment and a strong odor of marijuana present.

To the right of the living room PO Mayer saw the kitchen and a long hallway that leads to the rear of the apartment; PO Mayer denied seeing any officers walking down the hallway towards any room located at the rear of the apartment and he never saw any officers opening any cabinets, freezer units, drawers, or enclosed spaces in the kitchen. None of the officers on scene damaged any of the furniture or property inside the apartment.

During the fifteen minutes that PO Mayer was inside the apartment he remained at the door and had little interaction with the civilians inside the apartment. Capt. Henderson and Sgt. Arquer spoke to the group of civilians inside the apartment, but PO Mayer did not know what was being said. He did not recall hearing any officers question the group of civilians about the owner and he did not recall hearing any officer request that the civilians inside the apartment produce identification.

About ten feet away from where PO Mayer was standing an altercation occurred between several of the uniformed officers and § 87(2)(b) (identified by the CCRB), but because the room was dark and there were both civilians and police officers standing in front of PO Mayer, PO Mayer did not know what precipitated the altercation and he could not describe in detail what it consisted of apart from saying that § 87(2)(b) was taken to the ground and was handcuffed after about ten seconds. PO Mayer did not see any officers punch or kick § 87(2)(b) and he did not see any officer grab him by the throat or choke him. PO Mayer never became physically involved in § 87(2)(b) arrest and he did not hear any officer say, "Get the fuck off the phone!"

After about fifteen minutes, PO Mayer left the apartment with Sgt. Arquer, and Capt. Henderson remained inside the apartment with the uniformed officers that PO Mayer had seen when he first entered. PO Mayer denied knowing the final outcome of what happened inside the apartment and he did not know if anybody inside the apartment was ever identified as its owner.

Witness Officer: SERGEANT FLORENCIO ARQUER

- *At the time of the incident Sgt. Arquer was a § 87(2)(b)-year-old Hispanic male with black hair and brown eyes who stood 5'8", 240 lbs.*
- *On January 14, 2011, Sgt. Arquer was assigned as the anti-crime sergeant between 5:26 p.m. and 2:10 a.m. Sgt. Arquer was dressed in plainclothes and was partnered with PO Daniel Barreto and was assigned to RMP #202. The anti-crime team that Sgt. Arquer supervised consisted of PO Mayer, PO Daniel Barreto, PO Thomas Fusco, and PO Stephen Berardi.*

Memo Book

Sgt. Arquer did not record any entries in his memo book relevant to this incident (*encl. 33*).

CCRB Testimony

Sgt. Arquer was interviewed at the CCRB on March 27, 2012 (*encl. 34*). § 87(2)(g)

Sgt. Arquer stated that around 12:00 a.m. on January 15, 2011, he received a call on his cell phone from another officer from the 75th Precinct, whom he could not identify. The officer requested that Sgt. Arquer and PO Barreto respond to an apartment located at § 87(2)(b) to assist in controlling a large volume of people attending a party there. Sgt. Arquer denied that anything else – apart from the high volume of people attending a party at the location – was reported to him over the telephone. § 87(2)(e)

It took Sgt. Arquer and PO Barreto less than five minutes to respond to § 87(2)(b). Upon arrival, Sgt. Arquer saw nobody standing outside the building. Sgt. Arquer never learned who the initial responding officers to the apartment were. Sgt. Arquer waited for PO Mayer and PO Berardi to arrive and the team of Anti-Crime officers advanced to the § 87(2)(b) floor of the building and to the apartment where the party was being held.

When Sgt. Arquer and his team arrived on the § 87(2)(b) floor they saw about ten uniformed officers standing inside the apartment through the open door; Sgt. Arquer could not identify any of the officers by name, apart from Sgt. Zepherin and Capt. Henderson. None of the officers standing inside the apartment had their guns in hand and nobody in Sgt. Arquer's team of anti-crime officers removed their guns as they entered the apartment. A group of about fifteen civilians, a mixture of males and females, was standing inside the living room and Capt. Henderson and Sgt. Zepherin were asking them questions to identify the owner of the apartment. Music was not being played when Sgt. Arquer arrived at the apartment and the only furniture that he saw inside of it was a few chairs; he saw no television, no PlayStation, and no signs of alcohol or drug use.

During the five to ten minutes that Sgt. Arquer was on scene he remained inside the living room and he therefore did not know how many rooms the apartment had. Sgt. Arquer denied that he entered the kitchen or opened any cabinets, freezer units, or enclosed spaces. He denied seeing any other officers doing so and he denied that any officer on scene damaged any of the furniture inside the apartment. Sgt. Arquer did not recall saying anything to any of the civilians inside the apartment. Sgt. Arquer did not frisk any civilians inside the apartment and denied seeing any other officers doing so. Sgt. Arquer viewed the photograph of § 87(2)(b) during his CCRB interview but stated that he did not recognize him. Sgt. Arquer denied that he or any other officer told § 87(2)(b) or any civilian, "Get the fuck over here. Shut the fuck up." § 87(2)(b) was not

frisked.

The details of the arrest report completed by PO Mustapich for § 87(2)(b) were presented to Sgt. Arquer during his CCRB interview but he denied seeing any of the activity described by PO Mustapich in the arrest report. Sgt. Arquer viewed the arrest photograph for § 87(2)(b) but did not recognize him. Sgt. Arquer stated that he learned following the incident that an individual was arrested, but he denied knowing why and he denied seeing the arrest happen. Sgt. Arquer denied that any officer told § 87(2)(b) “Get the fuck off the phone.”

Subject Officer: CAPTAIN SCOTT HENDERSON

- *At the time of the incident, Capt. Henderson was a § 87(2)(b)-year-old African-American male with black hair and brown eyes who stood 6', 270 lbs.*
- *On January 15, 2011, Capt. Henderson was assigned as the executive officer of the 75th Precinct and was dressed in uniform. Capt. Henderson worked alone and did not recall the tour that he worked. He was assigned to an unmarked silver Jeep Cherokee.*

Memo Book

Capt. Henderson is not required to maintain a daily activity log and did not record entries in his memo book relevant to this incident.

CCRB Testimony

Capt. Henderson was interviewed at the CCRB on November 9, 2011 (encl. 20). § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

At approximately 12:45 a.m. on January 15, 2011, Capt. Henderson was patrolling the 75th Precinct alone in an unmarked silver-colored Jeep Cherokee. Over the radio, he heard a request made by Sgt. Zepherin requesting additional units at § 87(2)(b) in Brooklyn. § 87(2)(e)

§ 87(2)(f)

§ 87(2)(f)

§ 87(2)(f)

§ 87(2)(f)

§ 87(2)(f)

§ 87(2)(f)

Upon hearing the call for additional units, Capt. Henderson travelled to § 87(2)(b) and arrived there in less than ten minutes. Outside the building Capt. Henderson saw numerous police vehicles and he advanced into the building and to the § 87(2)(b) floor. Once on the seventh floor, Capt. Henderson saw about six officers, including Sgt. Zepherin and PO Paul Viar and officers from the 75th Precinct's Anti-Crime team supervised by Sgt. Arquer inside the apartment with between fifteen and twenty males. No music was being played when Capt. Henderson arrived and none of the officers inside the apartment had their guns in hand or drew their weapon in the presence of Capt. Henderson at any point. The front door to the apartment opens up into a long hallway and the living room is to the left. Capt. Henderson stated that clothes were scattered across the apartment's floor. He denied seeing any evidence of alcohol or drug consumption.

When Capt. Henderson entered the apartment the officers inside were requesting identification from the male civilians. § 87(2)(b) (identified by the CCRB) was uncooperative with producing his identification and he stated that he did not reside in the apartment. Additional

officers (whom Capt. Henderson could not identify by name) entered the apartment and § 87(2)(b) attempted to rush by them and flee from the apartment. One of the officers in the group prevented § 87(2)(b) from fleeing and placed him under arrest. § 87(2)(b) resisted arrest by flailing his arms in front of his body and by pulling his arms away from the officers. The force used by the officers to overcome § 87(2)(b) resistance consisted of reaching for § 87(2)(b) arms and pulling them behind his back to be handcuffed. Commands issued by the officers involved in apprehending § 87(2)(b) consisted of, “stop resisting!” Capt. Henderson did not recall saying or hearing another officer order § 87(2)(b) “Get the fuck off the phone!” Capt. Henderson had no recollection of § 87(2)(b) ever placing a phone call. Capt. Henderson had no recollection of the officers performing additional frisks on any of the other civilians inside the apartment. He never suspected that they had stored on their person any weapon.

Capt. Henderson was inside the apartment for about twenty minutes. Capt. Henderson did not search the apartment and never authorized any of the officers on scene to search the apartment; no property or furniture inside the apartment was damaged by any police officers on scene. Capt. Henderson left the apartment at the same time that § 87(2)(b) was removed from it, and he resumed patrol.

Witness Officer: PO SCOTT MUSTAPICH

- *At the time of the incident PO Mustapich was a § 87(2)(b)-year-old white male with brown hair and green eyes who stood 5’10”, 180 lbs.*
- *On January 14, 2011, PO Mustapich was assigned to solo foot post #1, located on Georgia Avenue between Sutter Avenue and Blake Avenue. He was dressed in uniform and worked alone between the hours of 5:30 p.m. and 8:30 p.m. Between 8:30 p.m. and 4:05 a.m. on January 15, 2011, PO Mustapich was assigned as Capt. Henderson’s driver.*

Memo Book

At 12:35 a.m. on January 15, 2011, PO Mustapich responded to a noise complaint at § 87(2)(b) and made an arrest at 12:45 a.m. PO Mustapich arrived back at the 75th Precinct stationhouse at 12:55 a.m. (*encl. 16*)

Arrest-Related Documents

PO Mustapich was assigned § 87(2)(b) arrest and noted on the arrest report (*encl. 17*) and complaint report (*encl. 18*) that § 87(2)(b) was playing loud music in a NYCHA building and was creating a disturbance to its residents. § 87(2)(b) reportedly refused to leave the location and yelled obscenities. He resisted arrest by flailing his arms and legs and refused to be handcuffed. PO Mustapich noted that physical force was used to restrain/control/remove. § 87(2)(b) was charged with § 87(2)(b)

CCRB Testimony

PO Mustapich was interviewed at the CCRB on September 19, 2011 (*encl. 19*). § 87(2)(g)

It took about twenty minutes for PO Mustapich to locate the building. He and Capt. Henderson travelled to an apartment located on the § 87(2)(b) floor and they heard no music being played. PO Mustapich did not recall seeing any civilians in the hallway and stated that by the time he and Capt. Henderson arrived at the apartment there were more than ten police officers already on

scene; it was a combination of uniformed and plain-clothed officers and PO Mustapich could not identify any of them by name. During the time that PO Mustapich was on scene he stood in the doorway and had no verbal or physical interaction with any of the civilians inside the apartment. Because there was a large crowd of officers standing in front of him PO Mustapich did not know what Capt. Henderson did while inside the apartment and he did not see any officers searching the apartment. None of the officers on scene had their guns in hand when PO Mustapich arrived.

Within two minutes of PO Mustapich's arrival § 87(2)(b) (identified by the CCRB) became agitated and began screaming obscenities while he paced back and forth in the living room of the apartment, which appeared to be abandoned because it was furnished with only an old couch. PO Mustapich did not recall seeing § 87(2)(b) in possession of any objects and he never became aware that § 87(2)(b) placed a telephone call in the presence of the officers. PO Mustapich neither said nor heard another officer on scene tell § 87(2)(b) "Get the fuck off the phone." Two uniformed officers handcuffed § 87(2)(b) and § 87(2)(b) resisted the process by flailing his arms and moving his body; PO Mustapich could not recall whether § 87(2)(b) fell to the ground but he denied that any of the officers choked § 87(2)(b).

PO Mustapich could not recall how long he was on scene but stated that he was assigned § 87(2)(b) arrest once he left the location. PO Mustapich did not recognize § 87(2)(b) in the photograph presented to him during his CCRB interview. He never learned who the first responding officers to this apartment were and he did not see any officer frisk § 87(2)(b) or hear any officer tell § 87(2)(b) "Get the fuck over here!"

Witness Officer: PO DANIEL BARRETO

- *At the time of the incident PO Barreto was a § 87(2)(b)-year-old white male with black hair and brown eyes who stood 6'2", 265 lbs.*
- *On January 14, 2011, PO Barreto was assigned to Anti-Crime with Sgt. Arquer between 5:30 p.m. and 2:05 a.m. on January 15, 2011. PO Barreto was dressed in uniform and was the operator of RMP #202, a blue Ford Crown Victoria.*

Witness Officer: PO THOMAS FUSCO

- *At the time of the incident PO Fusco was a § 87(2)(b)-year-old white male with black hair and brown eyes who stood 5'9", 245 lbs.*
- *On January 14, 2011, PO Fusco was assigned to the 75th Precinct's detective squad between 4:00 p.m. and 12:35 a.m. on January 15, 2011. PO Fusco was dressed in plainclothes and worked with Det. Castrogiovanni.*

Witness Officer: PO STEPHEN BERARDI

- *At the time of the incident, PO Berardi was a § 87(2)(b)-year-old white male with brown hair and brown eyes who stood 6'2", 220 lbs.*
- *On January 14, 2011, PO Berardi was assigned to Anti-Crime with PO Mayer between 5:30 p.m. and 2:05 a.m. on January 15, 2011. PO Berardi was dressed in plainclothes and was assigned to RMP #8134.*

Memo Books

None of the aforementioned officers recorded memo book entries relevant to this incident.

CCRB Statements

PO Fusco was interviewed at the CCRB on March 7, 2012 (*encl. 28*). PO Berardi was

interviewed at the CCRB on March 7, 2012 (*encl. 26*). PO Barreto was interviewed at the CCRB on March 12, 2012 (*encl. 30*). Each officer stated that his memory was not restored when provided details about the incident. None of these officers recognized § 87(2)(b) or Jarrett § 87(2)(b) in the photographs presented during their CCRB interviews. Each officer denied ever responding to § 87(2)(b) in Brooklyn on the date in question.

NYPD Documents

A review of the 75th Precinct's SPRINT Index for all calls placed between 7:00 p.m. on January 14 to 1:00 a.m. on January 15, 2011, located no reports about a noise complaint at § 87(2)(b). Only one SPRINT (#F17029) was located during that time span at that location. At 11:52 p.m. on January 14, 2011, a job was classified as a Park, Walk, and Talk (10-75P) at § 87(2)(b). A 75th Precinct Lieutenant marked the job as non-crime corrected (10-91) at 1:24 a.m. No other information is contained in the SPRINT report (*encl.* 37).

A review of the 75th Precinct's handwritten Stop, Question & Frisk log for both January 14 and 15, 2011, located no reports completed in connection with this incident (*encl. 41*).

The command log for the 75th Precinct shows that § 87(2)(b) and § 87(2)(b) were lodged into the stationhouse at 12:55 a.m. § 87(2)(b) listed physical condition was “appeared normal.” The arresting officer is listed as PO Scott Mustapich (*encl. 38*).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]

- Neither § 87(2)(b) nor § 87(2)(b) has filed a Notice of Claim with the City of New York as of May 25, 2012, with regard to the incident (*encl. 46*).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

Civilian's CCRB History

- This is the first CCRB complaint filed by [§ 87(2)(b)] (*encl. 8*).

Subject Officer's CCRB History

- Capt. Henderson has been a member of the service for sixteen years and there are four substantiated CCRB allegations against him (*encl. 7*):
 - In CCRB #9903758 two separate Abuse - Frisk and/or Search allegations were substantiated against Capt. Henderson. On August 21, 2000, The Board recommended that Capt. Henderson receive instructions. The NYPD disposition is not available via CTS.
 - In CCRB #200205513 two separate Discourtesy allegations were substantiated against Capt. Henderson. On June 9, 2003, The Board recommended that Capt. Henderson received charges. The NYPD imposed Command Discipline – A on Capt. Henderson in November, 2003.
- Sgt. Zepherin has been a member of the service for eighteen years and there are four substantiated CCRB allegations against him (*encl. 6*):
 - In CCRB #200303905 allegations of Abuse – Frisk, Abuse – Refusal to Provide Name/Shield, and Discourtesy – Word were substantiated against Sgt. Zepherin. On August 31, 2004, The Board recommended that Sgt. Zepherin receive charges for each substantiated allegation. In March, 2005, the NYPD dismissed the charges associated with the substantiated Abuse – Frisk and Discourtesy – Word allegations, and gave Sgt. Zepherin instructions regarding the substantiated Abuse – Refusal to Provide Name/Shield allegation.

Conclusion

Identification of Subject Officers

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(g)

Sgt. Arquer, PO Viar, and PO Mayer admitted to responding to the location in question, and Sgt. Arquer stated that both PO Berardi and PO Barreto were present as well. § 87(2)(g)

Allegations Not Pleaded

§ 87(2)(b) alleged that during § 87(2)(b) arrest one of the officers involved in his apprehension placed his hands around § 87(2)(b) throat and choked him. When reached over the telephone, § 87(2)(b) did not corroborate this aspect of his apprehension § 87(2)(g)

Investigative Findings and Recommendations

- **Allegation A: Abuse of Authority: Officers drew their guns.**

§ 87(2)(b) alleged that when he opened the door to his apartment he saw numerous plainclothes officers holding their guns in their hands. All the officers interviewed in connection with this investigation asserted that each officer's gun remained holstered for the duration of this incident.

The New York City Police Department affords its officers broad discretion in drawing their weapon and permits them to do so anytime there is reason to fear that his or her life is endangered. *New York City Police Department v. Gliner, OATH Index No. 955/00 (encl. 4).*

§ 87(2)(e), § 87(2)(g)

§ 87(2)(g)

- **Allegation B: Discourtesy: An officer spoke obscenely and rudely to** § 87(2)(b)
- **Allegation C: Abuse of Authority: An officer frisked** § 87(2)(b)

§ 87(2)(b) alleged that once he opened the door to his apartment one of the two plainclothes officers standing in the hallway allegedly yelled to him, "Get the fuck over here! Get the fuck on the wall!" The same officer allegedly pulled § 87(2)(b) into the hallway and frisked him. § 87(2)(b) described the officer who performed these actions as a white male dressed in plainclothes who was bald-headed and appeared to be in his late-twenties and who stood 6', 200-220 lbs.

A review of the NYPD photographs (*encl. 36*) of all officers known by the investigation to have responded to § 87(2)(b) apartment shows that PO Daniel Barreto most closely matches the physical description provided by § 87(2)(b). PO Daniel Barreto, however, had no recollection of this incident. Each officer interviewed in connection with this investigation denied that either of the actions alleged by § 87(2)(b) occurred, and each officer interviewed in connection with this investigation denied knowing who the initial responding officers to § 87(2)(b) apartment were.

§ 87(2)(g)

• **Allegation D: Abuse of Authority: Sgt. Kenneth Zepherin supervised the entry of § 87(2)(b) in Brooklyn.**

It is undisputed that Sgt. Zepherin and his team entered § 87(2)(b) apartment. Sgt. Zepherin stated that once the door to § 87(2)(b) apartment was opened, loud music – which had originally been heard while Sgt. Zepherin and his team were outside the building – continued being played. According to Sgt. Zepherin, each civilian spoken to at the door denied that he or she was the owner of the apartment and denied knowing who the owner was. Nearly all the officers interviewed in connection with this investigation stated that the apartment was dark and that it appeared to be abandoned because there did not appear to be any furniture inside of it. This fact, and suspicion that the apartment was abandoned, was supported in a telephone statement obtained from § 87(2)(b).

NYPD Patrol Guide Procedure 214-23 (*encl. 5*) delineates the actions which police officers are authorized to take in dealing with excessive noise generated from noise reproduction devices. Among other required actions, the provisions stated that the officer should first attempt to correct the condition by warning the violator. If the noise persists, the officer is authorized to issue the violator a summons for violating Administrative Code Section 24-220 (a) and to enter the premises and seize the noise reproduction device.

Absent exigent circumstances the police are not permitted to enter a residence without a warrant, People v. Bossett, 124 A.D. 2d 742 (1986) (*encl. 1*). Several exceptions to the search warrant requirement for entries are recognized. Whether reasonable grounds exist to believe that an emergency is at hand and an unabated intervention by the police necessary is one recognized exception to the warrant entry requirement, People v. Greenleaf, 222 A.D. 2d 839 (1995) (*encl. 2*). This exception is motivated by the obligation of the police to preserve human life, protect the public from the imminent risk of danger, and ward off the potential for violence, People v. Doerbecker, 39 N.Y. 2d 451-453 (1976) (*encl. 3*).

§ 87(2)(g)

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]

- **Allegation E: Abuse of Authority: Sgt. Kenneth Zepherin supervised the search of § 87(2)(b) in Brooklyn.**

§ 87(2)(b) [REDACTED] alleged that while he was detained inside of his living room for approximately four hours he saw an officer search his deep freezer unit, climb onto his kitchen countertop, and open the kitchen cabinets. In addition he stated that several police officers walked towards the rear of the apartment down a long corridor that connects the living room with the apartment's bedrooms; based on his physical positioning inside the living room, however, § 87(2)(b) [REDACTED] did not see what the officers did while in the rear of the apartment. Each officer interviewed in connection with this investigation denied that a search of the apartment was performed. § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- **Allegation F: Abuse of Authority: Officers damaged § 87(2)(b) s property.**

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- **Allegation G: Force: Officers used physical force against § 87(2)(b)**
- **Allegation H: Discourtesy: Capt. Scott Henderson spoke obscenely and rudely to § 87(2)(b)**

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]

- § 87(4-b) § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]

Team: 6

Investigator:	_____	Jonathan Phillips	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date